

inform the court or other authority that the demand has been or is being, as the case may be, referred for the prompt consideration of the Chief Counsel, and shall respectfully request the court or authority to stay the demand pending receipt of the requested instructions.

[61 FR 19838, May 3, 1996, as amended at 78 FR 70856, Nov. 27, 2013]

§ 103.25 Procedure in the event of an adverse ruling.

If the court or other authority declines to stay the demand in response to a request made in accordance with § 103.24 pending receipt of instructions, or rules that the demand must be complied with irrespective of instructions rendered in accordance with §§ 103.22, 103.23, 103.26, or 103.27 of this subpart not to produce the documents or disclose the information sought, the CBP employee upon whom the demand has been made shall, pursuant to this subpart, respectfully decline to comply with the demand. *See, United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

[61 FR 19838, May 3, 1996, as amended at 78 FR 70856, Nov. 27, 2013]

§ 103.26 Procedure in the event of a demand for CBP information in a state or local criminal proceeding.

Port directors, special agents in charge within the Office of Internal Affairs, chief patrol agents, directors within the Office of Air and Marine, directors of field laboratories, or any supervisor of such officials may, in the interest of federal, state, and local law enforcement, upon receipt of demands of state or local authorities, and at the expense of the State, authorize employees under their supervision to attend trials and administrative hearings on behalf of the government in any state or local criminal case, to produce records, and to testify as to facts coming to their knowledge in their official capacities. However, in cases where a defendant in a state or local criminal case demands testimony or the production of CBP documents or information, authorization from the Chief Counsel is required as under § 103.22 of this subpart. No disclosure of information under this section shall be made if any

of the factors listed in § 103.23(b) of this subpart are present.

[61 FR 19838, May 3, 1996, as amended at 78 FR 70856, Nov. 27, 2013]

§ 103.27 Procedure in the event of a demand for CBP information in a foreign proceeding.

(a) *Required prior approval for disclosure.* In any foreign proceeding in which CBP is not a party, no CBP employee shall, in response to a demand, furnish CBP documents or testimony as to any material contained in CBP files, any information relating to or based upon material contained in CBP files, or any information or material acquired as part of the performance of that person's official duties (or because of that person's official status) without the prior approval of the Chief Counsel, as described in paragraph (b) of this section.

(b) *Employee notification to Counsel.* Whenever a demand in a foreign proceeding is made upon a CBP employee concerning pre-clearance activities within the territory of the foreign country, that employee shall immediately notify the appropriate Associate Chief Counsel responsible for the pre-clearance location. All other demands in a foreign proceeding shall be reported by CBP employees to the Chief Counsel. The CBP employee shall then await instructions from the Chief Counsel concerning the response to the demand.

(c) *Counsel notification to originating component.* Upon receipt of a proper demand for CBP information, one which complies with the provisions of § 103.22(c), if the Chief Counsel believes that it will comply with any part of the demand, it will immediately advise the originating component.

(d) *Conditions for authorization of disclosure.* The Chief Counsel, subject to the terms of paragraph (e) of this section, may authorize the disclosure of CBP documents or the appearance and testimony of a CBP employee if:

(1) Production of the demanded documents or testimony, in the judgment of the Chief Counsel, are appropriate under the factors specified in § 103.23(a) of this subpart; and